

DECLARATION OF JOHN PANKIEWICZ, MD

I, John Pankiewicz, MD, declare the following to be true and correct under penalty of perjury:

1. I am a board certified forensic psychiatrist and a clinical associate professor of psychiatry at the Medical College of Wisconsin.
2. I have been selected to conduct competency evaluations and evaluations of assertions of the insanity defense in a number of state and federal court cases, including cases in this district. I have been retained by both the prosecution and defense.
3. I was contacted by Assistant United States Attorney Julie Stewart on November 29, 2022 and provided a copy of a report by Dr. Gerald Shiener regarding Defendant John Whelan.
4. Based on my training and experience, a determination of whether someone is suffering the kind of neurocognitive deficit described by Dr. Shiener requires a comprehensive assessment which includes a valid battery of tests as well as significant capacity for observation. Such observation should include observation in both a clinical setting as well as observation of an individual's capacity for self-care. These types of observations require more than a single session on a single day.
5. Based on my training and experience, a single assessment of the type provided by Dr. Shiener is insufficient to conclude that an individual is suffering from the kind of current, and past, impairment as alleged in Dr. Shiener's report.
6. Additionally, Dr. Shiener did not conduct the types of cognitive assessments that would be required to reach a conclusion of cognitive impairment. Indeed, the three cognitive assessments that Dr. Shiener performed are known in the medical community as screening tests,

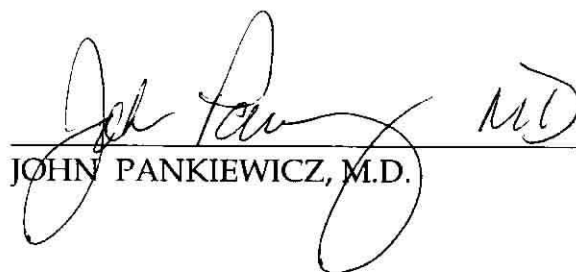
which lack internal measures of validity. This means that the assessments do not provide an examiner with the ability to determine whether the subject's poor performance was purposeful. Such internal validity measures are critical when assessing competency and mental status, particularly in criminal cases where feigning incapacity is of particular concern.

7. Dr. Shiener's report also fails to address the possibility of other medical reasons for potential cognitive changes. For example, poorly controlled diabetes or nutritional deficits can also cause thinking deficits, of the kind Dr. Shiener describes.

8. Given the facts of the case and the information provided in Dr. Shiener's report, it is my medical opinion that a comprehensive, in-patient assessment at a Federal Medical Center, which has the ability to conduct a battery of valid tests as well as observe Dr. Whelan for a significant period of time, would provide the most medically valid assessment of his competency and mental status at the time of the alleged offenses.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 2, 2022


JOHN PANKIEWICZ, M.D.